IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER THE CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2)(b)]
Description of case

Civil Writ Petition No. 6062 of 2001 (S/S) Decided on: Nov. 14, 2006

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date. 14.11.2006

(Initial of judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 6062 of 2001 (S/S)
(Old No. 42560 of 1998)

Bhupendra Singh Bist
S/o late Sri Sohan Singh Bist,
R/o Village Manpur near Milk Dairy,
P.O. Kotdwar, Distt. Pauri Garhwal.

…… Petitioner

Versus

1. State of U.P.
   through Secretary Development of Forest,
   Govt. of Forest of U.P., Lucknow.
2. Chief Conservator of Forests,
   U.P., Lucknow.
3. Chief Conservator of Forests, Garhwal,
   Circle Garhwal, Dehradun.
4. Conservator of Forests, Shivalik, Circle,
   U.P. Dehradun.

…… Respondents

Mr. I.S. Mehra, learned counsel for the petitioner.
Mr. N.P. Sah, learned Standing Counsel for the State.

Hon'ble Prafulla C. Pant, J.

2) By means of this petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of mandamus commanding the respondents to appoint petitioner as Forester in Garhwal Circle of the Forest Department. He has also sought payment of salary w.e.f. 11.07.1988, treating the petitioner, who is a Forest Guard, as Forester, for said period.

3) Heard learned counsel for the parties and perused the record.

4) Brief facts of the case, as narrated in the writ petitioner, are that the petitioner's father Sohan Singh Bist, who was a Forester in Bhirigukhal Range, Lansdowne, Division of Garhwal Circle, died on 15.09.1987. At the time of his death he left behind him his widow and three sons. Petitioner is an eldest son of the deceased Sohan Singh Bist. His education qualification was High School. He sought appointment on compassionate ground as Forester, against the post of his father, in the Forest Department. He was called by the respondents and interviewed. However, the petitioner was appointed as Forest Guard (not as Forester) in the Forest Department. The appointment was given to the petitioner in the year 1988. The petitioner joined his duties as Forest Guard and is working on said post, since 1988. However, he made fresh representation seeking his appointment on the post of Forester, but to no avail. Ultimately, the petitioner filed this petition, before the Allahabad High Court in the year 1998, from where it has been received by way of transfer to this Court, for its disposal.

5) The respondents contested the petition and filed their counter affidavit, wherein it has been admitted that the petitioner's father Sohan Singh Bist was a Forester, who died on 15.09.1987. Denying the rest of the contents, as stated in the petition, it is pleaded by the respondents that the Conservator of Forests interviewed the petitioner

and he was found unfit for the post of Forester. However, considering the other factors, appointment on compassionate ground was given to him on the pot of Forest Guard, in July 1988, and the petitioner in pursuance of said letter dated 28.07.1988, joined his duties, on 11.08.1988. It is stated in the counter affidavit that after the period of seven years, now, the petitioner is agitation that he should have been appointed as Forester. It is further stated in the counter affidavit that the petitioner has not right to be appointed on the post of Forester. It is further stated in the counter affidavit that the petitioner was found fit for the post of Forest Guard only, as such, he was rightly appointed on said post.

6) In the rejoinder affidavit, the petitioner has reiterated the contents of the petition, stating that he has been deprived of appointment on the post of Forester arbitrarily, by the respondents.

7) Having heard learned counsel for the parties and going through the record, it appears to be an admitted fact that the petitioner's father died in harness as Forester. It is also not disputed that the petitioner was given appointment on compassionate ground on the post of Forest Guard, and he joined his duties on said post, in the years 1988. It is pertinent to mention here that the post of the Forest Guard is a Class IV post (Group 'D'), while the post of the Forester is a Class III (Ministerial) post. Both the posts are out of the purview of the Public Service Commission. The provisions of the U.P. Recruitment of

Dependents of Government Servants Dying in Harness Rules, 1974, are applicable to the case of the petitioner. It is not a matter of right that the petitioner can claim his appointment on the post of Class III (Group 'C'). The object of the Rules is to provide helping hand to the members of the bereaved family of the employee, who had died during harness. By appointing the petitioner as Forest Guard, the necessary assistance has been provided by the respondents, to the family of the deceased.

8) Rule 5 of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, governs the recruitment of the member of family of the deceased. The same reads as under:

> "*5.* ***Recruitment of a member of the family of the deceased.-***
>
> *(1) In case of a government servant dies in harness after the commencement of these Rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a Sate Government or a Corporation owned or controlled by the Central Government or a State Government shall, on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of*

the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person -

i) fulfils the educational qualifications prescribed for the post,

ii) is otherwise qualified for Government service, and

iii) makes the application for employment within five years from the dated of the death of the Government servant:

Provided that where the state Government is satisfied that the time limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

(2) As far as possible, such an employment should be given in the same department in which the deceased Government servant was employed prior to his death.

(3) Each appointment under sub-rule (1) should be under the condition that the person appointed under sub-rule (1) shall upkeep those other family members of the deceased Government servant who are incapable for their own maintenance and were dependent of the abovesaid deceased Government servant immediately before his death."

(9) The Rule nowhere provides that the appointment of the dependent should be made only on the post, which was held by the deceased. His educational qualification, requirement of financial assistance and all other relevant factors including suitability, are required to be seen, before a person is appointed to a post outside the purview of the Public Service Commission, by the appointing authority, under aforesaid rules.

10) Annexure –3 to the writ petition, which is copy of the appointment of the petitioner on the post of Forest Guard, shows that he was given appointment on compassionate ground, considering fulfillment of the conditions required under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974. Annexure –R.A. '1-A' to the rejoinder affidavit, filed by the petitioner, further shows that while he was directed to be appointed by Conservator of Forests on the post of forest Guard, it was also mentioned that the petitioner was not found suitable for the post of Forester. It is admitted to the petitioner that he was interviewed for the purpose, for considering him for the appointment on the post of Forester. In the circumstances, since suitability is required to be seen under rule 5, the respondent authorities have committed no error of law in refusing appointment on the post of Forester and providing him job on the post of Forest Guard, after considering the suitability of the petitioner.

11) Learned counsel for the petitioner argued that other similarly situated candidates were provided job on the

post of Forester and it is argued that injustice has been done to the petitioner by not providing him job in Group 'C' post. I am unable to accept the argument, for the reason that it is not clear from the record that the other candidates, who were appointed on compassionate ground, had the same educational qualification and other relevant factors, required to be considered for the post of Forester, or not? Admittedly, the petitioner was only High School, at the time he was given appointment to the post of Forest Guard.

12) Apart form this, this writ petition appears to have been filed nearly after ten years of death of father of the petitioner, and almost nine years after he was provided job on the post of Forest Guard. Merely stating that representation were made to the departmental authorities, in between said period, cannot be said to be a sufficient explanation for such a long delay and latches.

13) In the above facts and circumstances, for the reasons as discussed in the aforementioned paragraphs, I see no force in the writ petition. The same is liable to be dismissed. The writ petition is dismissed. No order as to costs. (All pending applications in this Petition also stand disposed of).

(Prafulla C. Pant, J.)

Dt. : November 14, 2006
H.Negi